



**IDAHO TRANSPORTATION DEPARTMENT**

**INVITATION TO BID (ITB)**

**REQUISITION # C-131456**

**Flaggers for Traffic Control, Bridge Core Drilling for Idaho Transportation Department District 3**

July 9, 2014

**ALL sealed bids must be received by 5:00 PM Mountain Time on July 29, 2014. Sealed bids will be opened at 10:30 AM Mountain Time on July 30, 2014** at Business and Support Management, Purchasing Unit, located at 3311 West State Street, Boise ID 83703.

**This project IS Federally Funded**

**Public Works Licenses IS NOT Required**

This solicitation is issued by the Idaho Transportation Department's Business and Support Management (BSM) - Purchasing Unit. The BSM – Purchasing Unit is the only contact for this solicitation. **All questions must be submitted, in writing (fax or email), no later than July 23, 2014 at 5:00 PM Mountain Time. Submit questions to:**

Kirk Anderson, Buyer  
Email: [kirk.anderson@itd.idaho.gov](mailto:kirk.anderson@itd.idaho.gov)  
Fax: 208.287.3865

For clarification of bidding requirements, contact **Kirk Anderson** at (208) 334.8084.

For bid updates, addendums, & bid results go to:  
<http://itd.idaho.gov> "Doing Business with ITD", "ITD Goods and Services"

Bids must be returned in a sealed envelope clearly marked and addressed as shown below:

<p><b>ATTENTION: BUSINESS &amp; SUPPORT MANAGEMENT – PURCHASING</b> <b>Bidder:</b> <i>[name of company submitting the bid]</i> <b>Sealed Bid For:</b> <i>[title of solicitation]</i> <b>Bid Number:</b> <i>[the requisition number on cover page]</i> <b>Closes:</b> <i>[Bid closing date]</i></p>
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**Mailing Address**

Idaho Transportation Department  
Business & Support Management - Purchasing Unit  
3311 W. State St. (P.O. Box 7129)  
Boise, ID 83703 (83707-1129)

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## **1. GENERAL INFORMATION**

### **1.1 PURPOSE**

The purpose of this Invitation to Bid (ITB) is to solicit sealed Bids to establish a contract between the Idaho Transportation Department (ITD) and a Contractor to provide Flagging and Traffic Control during core drilling at multiple bridge locations on State Highways within District 3, as further detailed below

### **1.2 CONTRACT TERM**

The term of the resulting contract shall be August 4<sup>th</sup> through October 24, 2014.

This Invitation to Bid (ITB) is expected to be a one-time order; however, ITD reserves the right to purchase additional flagging in accordance with MUTCD during the term of the resulting contract.

### **1.3 CONTRACT AWARD**

Contract award will be "All or None" to the lowest responsive, responsible Bidder, based on the "Total Extended Cost" A +B in Bid Schedule (**Appendix B**).

### **1.4 METHOD OF MEASUREMENT**

ITD will measure the quantities of contract pay items using the units of measure (UOM) specified on the Bid Schedule (**Appendix B**).

### **1.5 BASIS OF PAYMENT**

ITD will pay the awarded Contractor bi-weekly for flagger and superintendent labor. Invoices must include hours worked, calendar days, work location, and Requisition # C-131456 for accepted quantities of contract pay items based on the amount bid in **Bid Schedule A (Appendix B)**.

ITD will pay the awarded Contractor Lump Sum for the Total Extended Price for, Rent Construction Signs using the Units of Measure (MOU) specified on the **Bid Schedule B (Appendix B)**.

### **1.6 BILLING/INVOICING**

Billing/Invoicing shall be sent to Idaho Transportation Department District 3:

Preferred Invoice submission: [ITDD3VendorInvoices@itd.idaho.gov](mailto:ITDD3VendorInvoices@itd.idaho.gov)

Paper Invoice submission:  
District 3 accounts payable  
P.O. Box 8028  
Boise, ID 83707-8028

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**1.7 PROJECT LOCATION**

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Project locations are identified in **Section 2**.

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**1.8 RESPONSE**

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Enter your pricing on Appendix B, bid schedule.

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**1.9 POINT(S) OF CONTACT**

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Administrator for this solicitation and its resulting contract is:

Mart Earl, Trans Tech Principle Engineer  
Idaho Transportation Department  
Email: mart.earl@itd.idaho.gov  
Phone: 208.334.8974  
Fax: 208.334.8321

Contact information for ITD's Project Manager(s) will be provided to the Contractor(s) following award of the contract. The Project Manager will be the Contractor's point of contact for project specific coordination requirements.

## 2. SCOPE OF WORK

### 2.1 SUMMARY OF WORK

The scope of work includes but is not limited to furnishing all labor, materials, and equipment, Contractor shall provide ITD flagging and traffic control at the specified times and locations in accordance with the specification contained herein.

**Project not to exceed \$30,000.**

**Contractor shall be responsible for determining most current Davis-Bacon wage rates.**

### 2.2 DELIVERY/SCOPE OF WORK

Contractor shall deliver flaggers, superintendent, 48" X 48" signs, two way radio communication devices, as described in attached Traffic Control Plan, FOB Destination, locations described below, or as coordinated with ITD's contact.

*Locations in order of precedence*

1. US-95, MP 157.47
2. US-95, MP 154.1
3. US-95, MP 145.79 (this location may require 2 additional flaggers)
4. US-95, MP 138.52
5. US-95, MP 133.42
6. US-95, MP 133.31
7. US-95, MP 132.76
8. US-95, MP 132.69
9. US-95, MP 121.67

ITD reserves the right to cancel or change times and locations.

Unless otherwise described herein, authorized hours of traffic control flagging shall be continuous from the hours of 8AM through 5PM, Tuesday, Wednesday and Thursday unless otherwise instructed by ITD. Contractor will be set up for flagging at 8AM at appointed work sites and work days.

Traffic shall be maintained through the work area and protected in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), latest edition, and ITD's Work Zone Safety and Mobility Program:

<https://itd.idaho.gov/highways/docs/Work%20Zone%20Safety%20and%20Mobility%20Program.pdf>

Flaggers and Superintendent shall have a current Idaho State Traffic Control Work Zone Flagger certificate.

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**2.3 WORKSITE CLEANUP**

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Contractor shall keep work areas free of waste materials. Upon completion of work, all waste, tools, supplies, and material shall be removed from ITD's premises..

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**2.4 WORK NOT NOTED, DETAILED OR SPECIFIED**

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All work required for complete installation or assembly shall be included in the Contractor's Bid. Where minor portions of required work are not noted, detailed, or specified, such work shall be done in accordance with proven construction practice or accepted industry standards at no additional cost to the owner. The Contractor shall be held responsible for verification of existing job conditions prior to Bid. No additional cost shall be awarded to the successful Contractor (or their subcontractors) after Bids have been submitted and contracts awarded for failure to verify existing field conditions. Discrepancies or questions arising between actual field conditions and contract documents shall be made in writing and faxed to the number stated in the Bid document.

### 3. BID GUIDELINES

#### 3.1 INFORMATION GIVEN PRIOR TO AWARD

Oral explanations, instructions and interpretations given to Bidders prior to award of contract will not be binding. It is ITD's intent to provide all Bidders equal opportunity to access and acquire all available pertinent information necessary to formulate a responsive Bid. Any information, specifications, plans, data or interpretations which ITD discovers is lacking and may be important to all Bidders, will be furnished to all Bidders in the form of an addendum.

The Bidder will be responsible for monitoring <http://itd.idaho.gov> "Doing Business with ITD", "ITD Goods and Services" for updates or addenda, receipt of which must be acknowledged and submitted with bid response.

#### 3.2 PERFORMANCE

Submission of a Bid by any Contractor will be accepted as prima facie evidence that they have satisfied themselves as to the nature and location of the work and all other matters, which can in any way affect the work or cost thereof under the contract. Any failure of the Contractor to acquaint them with all available information, including a physical survey of the site of the proposed work, will not relieve them from successfully performing all the work required.

#### 3.3 REQUIREMENTS AND CONDITIONS

Sealed Bids must be received at the time and place stated on the Cover Page. Timely receipt of Bids will be determined by the date and time the Bid is received at the address specified. Hand delivery is encouraged to ensure timely receipt. No Bid will be accepted after the time indicated. All material that is submitted in accordance with this solicitation becomes the property of the State of Idaho and will not be returned.

**Bidder must submit their Bid on the forms furnished by ITD.**

#### 3.4 IRREGULAR BIDS

Bids will be considered non-responsive and will be rejected for any of the following reasons:

1. If the bid form(s) are on a form other than that furnished by ITD or if the form is altered or any part thereof is detached.
2. If there are unauthorized additions, conditional or alternate bids, omission of addenda, or irregularities of any kind, which tend to make the bid incomplete, indefinite, or ambiguous as to its meaning.
3. If the Bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
4. If the Bid Schedule does not contain a unit price for each pay item listed except in the case of alternate pay items.
5. If the bid documents are not sealed, when received by ITD.
6. If the bid is submitted in pencil.
7. If Addendums are not signed and returned with the bid documents.

8. Bidder fails to submit the proper Bid Guaranty (see **Section 3.6**).

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### **3.5 DISQUALIFICATION OF BIDDERS**

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Any of the following reasons may be considered as being sufficient for the disqualification of a Bidder and the rejection of their bid:

1. A Bidder submits multiple bids for the same project, under the same or different name.
2. Evidence of collusion among Bidders. Participants in such collusion shall receive no recognition as Bidders for any future work of the State until any such participant shall have been reinstated as a qualified Bidder.
3. Bidder, or its principals or affiliates, is disbarred, suspended, or ineligible from federal contracting; see Idaho Code § 67-5730 (2) (f).

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### **3.6 BID GUARANTY**

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No bid will be considered unless accompanied by a 5% Bid Bond of the character and in an amount not less than the amount indicated on the bid, to be forfeited if the Bidder, upon acceptance of bid, fails or refuses to enter into a contract within fifteen (15) days after the presentation of the contract by ITD for execution and to furnish the required bond.

Bid Bonds must be submitted on the most current version of The American Institute of Architects (AIA) Document 310, signed by the Bidder and their surety company. Power of Attorney for the person who executes the bond on behalf of the surety as Attorney-In-Fact must accompany the Bid Bond.

Guarantees submitted via any other obligation will NOT be considered and the bid will be rejected.

**Please note: Bonding Surety must be registered and licensed with the Idaho Department of Insurance at the time of bid closing. Bid Guaranty will not be accepted if Surety is not registered and licensed in Idaho, and bid will be deemed non-responsive and rejected.**

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### **3.7 RETURN OF BID GUARANTY**

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Bid guaranties, except those of the two lowest responsive, responsible Bidders, will be returned immediately following the opening and checking of the bids. The retained Bid Guaranty of the unsuccessful of the two lowest responsive, responsible Bidders will be returned within 10 days following the award of contract and that of the successful Bidder shall be returned after satisfactory Surety bonds have been furnished and the contract has been executed.

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### **3.8 SURETY BOND REQUIREMENTS**

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The lowest responsive, responsible Bidder shall furnish a performance bond and a payment bond each in the amount of the contract.

Performance and Payment Bonds must be submitted on the most current version of The American Institute of Architects (AIA) Document 312, signed by the Bidder and their surety company. Power of

Attorney for the person who executes the bond on behalf of the surety as Attorney-In-Fact must accompany the Bid Bond.

Guarantees submitted via any other obligation shall NOT be accepted.

**Please note: Bonding Surety must be registered and licensed with the Idaho Department of Insurance. Performance and Payment bonds shall not be accepted if Surety is not registered and licensed in Idaho, and contract shall not be executed by ITD. If Contractor fails to file acceptable bonds within 15 calendar days after the contract has been received by the Bidder, this failure may be deemed just cause for the cancellation of the award of contract and the forfeiture of the proposal guaranty which shall become the property of the State, not as a penalty, but in liquidation of damages sustained.**

### **3.9 CONSIDERATIONS OF BID**

After the bids are opened and read, they shall be compared on the basis of the summation of the products of the approximate quantities shown in the Bid Schedule by the unit bid prices. The results of such comparisons will be available <http://itd.idaho.gov> 'Doing Business with ITD', 'Bid and Contract Information', 'ITD Goods and Services'. The right is reserved to reject any or all bids, to waive technicalities, to advertise for new bids, or to proceed to do the work otherwise, if, in the judgment of ITD, it is in the best interest of the State.

### **3.10 BIDDER CHALLENGE TO DEPARTMENT DETERMINATION**

A Bidder who did not submit the lowest responsible bid, as determined by ITD, may within five (5) calendar days of bid opening, file a written application to challenge ITD's determination of the lowest responsible Bidder and apply to ITD's Chief Engineer for the appointment of a hearing officer to hold a contest case hearing. The application shall set forth in specific terms the reasons why ITD's decision is thought to be erroneous.

### **3.11 EXECUTION/AWARD OF THE CONTRACT**

The award of contract, if it is awarded, will be made within 15 calendar days after the Intent to Award Notice letter has been mailed to the lowest responsive, responsible Bidder whose bid complies with all requirements prescribed. However, the award may be deferred beyond 15 calendar days by mutual written agreement between ITD and the lowest responsive, responsible Bidder.

The contract shall be signed by the lowest responsive, responsible Bidder and returned within 15 calendar days after the Bidder has received the contract. If the contract is not executed by the State within 15 calendar days following receipt from the Bidder of the signed contracts, the Bidder will have the right to withdraw their bid without penalty. No contract shall be considered as effective until it has been fully executed by all of the parties thereto.

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**3.12 FAILURE TO EXECUTE CONTRACT**

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If the Bidder fails to perform any of the following within 15 calendar days after receipt of the contract, ITD may cancel the award of the contract and retain the Bid Guaranty as liquidation of damage:

1. Execute the contract
2. File the contract bonds

ITD may award the contract to the next lowest responsible Bidder, advertise for new bids, or proceed to do the work otherwise.

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**3.13 AUTHORITY/NOTICE TO PROCEED**

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The notice to proceed will be given after the required submittals specified in the specifications are received, approved, and returned to the Contractor and construction and material delivery schedules are established between the Contractor and Project Manager.

## **4. TERMS AND CONDITIONS**

### **4.1 STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION**

The *2012 ITD Standard Specification for Highway Construction*, the most current Supplemental Specifications (January 2013), the most current Quality Assurance Manual, and the QA Special Provisions are incorporated by reference where applicable to this contract. The *2012 ITD Standard Specification for Highway Construction* is available to the Contractor for \$30.00 plus tax. Contact ITD at 334-8430 to purchase, or visit: <http://itd.idaho.gov/manuals/ManualsOnline.htm>, to download both the *2012 ITD Standard Specification for Highway Construction*, and the Quality Assurance Manual.

Unless otherwise modified by this Invitation to Bid, the contract and work for the project shall be administered in accordance with the *2012 ITD Standard Specification for Highway Construction*. The most current version of ITD's Supplemental Specifications to the 2012 Standard Specifications shall also apply.

The Contractor shall comply with all applicable provisions of the *2012 ITD Standard Specification for Highway Construction*, Supplemental Specifications, the Quality Assurance Manual, and the Standard Drawings.

### **4.2 SUBLETTING/SUBCONTRACTING**

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the contract or any portion of the contract, or the right, title, or interest in the contract without the ITD District Engineer's written consent. If the Engineer consents to subletting a portion of the work, the Contractor shall use its own organization to perform work amounting to at least 30 percent of the original contract amount.

### **4.3 FHWA-1273**

See FHWA-1273, Revised May 1, 2012, "REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS," for additional provisions incorporated into the terms of this contract. If the FHWA-1273 is revised or updated, any and all revised/updated FHWA-1273s shall be incorporated into this contract. The current FHWA-1273 is attached; the revised or updated FHWA-1273 may be accessed at: <http://www.fhwa.dot.gov/programadmin/contracts/1273/>

### **4.4 DAVIS-BACON ACT**

DBA wage rates may be applicable to facilities dedicated exclusively, or nearly so, to the performance of the contract or project. Facilities include, but are not limited to, borrow sources, hot plants and batch plants. Apply the wage rates to facilities that are adjacent or virtually adjacent to the site of work. The Engineer will evaluate the applicability of Davis-Bacon wage rates for facilities on a case-by-case basis. However, all facilities located within a 1-mile distance of the project site will be considered virtually

adjacent by ITD and subject to Davis-Bacon wage rate requirements, unless it can be shown otherwise by the Contractor.

Davis-Bacon wage rates apply to this contract. The application criteria must be for the appropriate Idaho County for which the service is to occur. DBA wage rates can be located at: <http://www.wdol.gov/dba.aspx>

State of Idaho, Highway Construction, County of:	General Decision Number:	Version Date:

**Wage Determination Decisions that apply to this contract will be those decisions in effect 10 calendar days prior to the Bid Opening, and will remain unchanged for the duration of the contract.**

#### **DISADVANTAGED BUSINESS ENTERPRISES**

The successful bidder shall be required to meet the specified Disadvantaged Business Enterprises (DBE) participation goal requirement or provide well documented information to assure that good faith efforts have been pursued before award of contract is made. Please note the DBE Special Provisions have been split into two categories:

Race/Gender-Neutral Projects (ITD has been neutral since 7/06) and Race/Gender-Conscious Projects. Both provisions are located at: <http://www.itd.idaho.gov/civil/eeocc.htm>

For this contract the specified DBE participation goal is not a set percentage requirement. The ITD F overall annual statewide is updated annually and can be accessed at: <http://www.itd.idaho.gov/civil/dbegoal.htm>

## **4.5 EQUAL EMPLOYMENT OPPORTUNITIES**

See Equal Employment Opportunity (EEO) Special Provision, for additional provisions incorporated into the terms of this contract. If the EEO Special Provision is revised or updated, any and all revised/updated EEOs shall be incorporated into this contract. The current EEO Special Provision and any revisions or updates can be accessed at: <http://www.itd.idaho.gov/civil/eeocc.htm>

## **4.6 CHANGES AND EXTRA WORK**

The Engineer reserves the right to make, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

If the alteration or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

The term "significant changes" shall be construed to apply only to the following circumstances:

- a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
- b. When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

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#### **4.7 DIFFERING SITE CONDITIONS**

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During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

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#### **4.8 AUTHORITY OF THE ENGINEER AND SUSPENSION OF WORK**

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If the performance of all or any portion of the work is suspended or delayed by the Engineer for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for

adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make adjustment as provided (excluding profit) and modify the contract in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

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#### **4.9 COLLUSION OF QUOTERS**

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By signature on this proposal, the bidder declares under penalty of perjury under the laws of the United States, that the firm, association, or corporation has not by or through any of its officers, partners, owners, or any other person associated therewith, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this highway project, and is not financially interested in or otherwise affiliated in a business way with any other bidder on this project.

Each Contractor, Subcontractor, or both shall provide a certified copy of each weekly payroll to the Engineer. Include a statement, verifying payment of the fringe benefits, either to the employee, or to an authorized agent.

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#### **4.10 RETENTION OF RECORDS**

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The Contractor will be required to maintain accounting records and other evidence pertaining to the costs incurred and to make the records available at their office at all reasonable times. Records must be retained a minimum of three (3) years after project and contract completion.

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#### **4.11 PERMITS**

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ITD will be responsible for utilities, permits and locations.

Unless otherwise required by the contract, the Contractor is responsible for any of the following that are necessary to perform the work:

1. Obtaining and complying with permits and licenses.
2. Paying charges, fees, and taxes.

3. Providing the necessary notices

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**4.12 CODES**

Contractor, including subcontractors, shall submit their estimate in accordance with plans and specifications. If plans and specifications do not comply with any codes having jurisdiction in that particular place or construction, Contractor shall submit alternate price on any changes necessary to comply with such codes. If such alternates are not stated in estimate, it shall be assumed that Contractor's base estimate includes, to the best of their knowledge and experience, all work necessary to comply with such codes.

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**4.13 COMMODITY STATUS**

It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by ITD in the specifications. Demonstrators, previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. "New" means items that have not been used previously and that are being actively marketed by the manufacturer or Contractor. The items may contain new or minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have ITD as their first customer and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. The warranty is to include replacement, repair, and any labor for the period of time required by other specifications or for the standard manufacturer or vendor warranty, whichever is longer.

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**4.14 CLAIMS FOR ADJUSTMENT AND DISPUTES**

If the Contractor believes that additional compensation is due them for work or material not clearly covered in the contract, or not ordered as extra work, as defined herein, they shall prosecute their claim in the following manner.

Prior to doing the work on which they believe additional compensation is due them, the Contractor shall notify the District Engineer, in writing of their intent to file a claim. If such notification is not given, then the Contractor will thereby waive their right to any claim for such additional compensation.

At a minimum, the detailed letter shall include a narration of events, citing of entitlement and a showing of the amount of compensation and/or adjustment of time believed due. Full documentation for all elements in the letter shall be included. The claim will be considered and a determination made. The District Engineer will notify the Contractor in writing of the decision.

The decision will be final and conclusive unless, within thirty (30) days from receipt of the District Engineer's letter, the Contractor submits an appeal in writing to the Contract Administrator. All pertinent information, references, arguments and data to support the claim shall be included. The

Contract Administrator will review the claim and the Contractor will be notified by in writing. This decision will be final and conclusive.

In connection with any appeal proceeding under this subsection, the Contractor will be afforded an opportunity to be heard and offer evidence in support of their claim at any level of review. Pending final decision of a dispute hereunder the Contractor shall proceed diligently with performance of the contract.

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#### **4.15 FORCE MAJEURE**

Neither party will be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, strikes, freight embargoes, or unusually severe weather, provided that in all cases the Contractor shall notify ITD promptly in writing of any cause for delay and ITD concurs that the delay was beyond the control and without the fault or negligence of the Contractor. The period for the performance will be extended for a period equivalent to the period of the Force Majeure delay. Matters of the Contractor's finances will not be a Force Majeure.

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#### **4.16 COMPLIANCE**

If a formal and written complaint is registered with the Contractor in respect to unsatisfactory work performance, the Contractor shall have 72 hours in which to respond in person to the complaint, to remedy the problem(s). Failure to respond in the prescribed time to the complaint or to remedy the problem may result in termination of the contract as provided in **Sections 4.12 and 4.13**.

If the District Engineer is not satisfied with the results and remediation of the complaint, periodic and joint inspections with the Contractor may be required to discuss and point out Contractors violations. Failure of the Contractor to attend these inspections may result in termination of the contract.

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#### **4.17 DEFAULT AND TERMINATION OF CONTRACT**

Should the Contractor neglect to prosecute the work properly, or fails to perform any provision of the contract, ITD, after seven (7) days from written notice to the Contractor, may without prejudice to any other remedy they may have, make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due to the Contractor or, at its option, may terminate the contract and take possession of all materials, tools, fixtures and furnish the work by such means as ITD sees fit, and if the unpaid balance of the contract price exceeds the expense of finishing the work, such excess will be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor's surety will pay the difference to ITD.

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#### **4.18 TERMINATION FOR CONVENIENCE OF THE STATE**

The performance of work under this contract may be terminated by ITD in accordance with this subsection in whole, or from time to time in part, whenever it shall be determined that such termination is in the best interest of the State. Any such termination will be effected by delivery to the Contractor of

a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

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**4.19 APPROPRIATION BY LEGISLATURE REQUIRED**

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The State is a government entity and this Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. The State reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending. All affected future rights and liabilities of the parties hereto shall thereupon cease within ten (10) calendar days after notice to the Contractor. It is understood and agreed that the State's payments herein provided for shall be paid from Idaho State Legislative appropriations.

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**4.20 INDEMNIFICATION**

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The Contractor shall indemnify, save harmless, and defend regardless of outcome, the State from the expenses of and against all suits, actions, claims, or costs, expenses, and attorney fees that may be incurred because of any injuries or damages received or sustained by any person, persons, or property on account of the operations of the Contractor or their subcontractors; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in the work; or because of any act or omission, neglect, or misconduct of the Contractor or their subcontractors; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act or any other law, ordinance, order or decree.

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**4.21 SAVEHARMLESS**

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The Contractor shall exonerate, indemnify, and hold ITD harmless from and against and assume full responsibility for payment of all federal, State and local taxes or contributions imposed or required under unemployment insurance, social security, workman's compensation, and income tax laws with respect to the Contractor or the Contractor's employees engaged in the performance of this Agreement.

The Contractor shall maintain Worker's Compensation Insurance as required by Idaho Code and shall provide to ITD a certificate of Idaho Worker's Compensation Insurance issued by a surety licensed to write Idaho Worker's Compensation in the State of Idaho, or an extraterritorial certificate approved by the Idaho Industrial Commission from a State that has a current reciprocity agreement with the Idaho Industrial Commission. Failure to provide a Certificate of Workman's Compensation Insurance may result in a price adjustment to cover any cost to ITD of providing the necessary workman's compensation insurance. ITD shall not assume liability as an employer.

The Contractor shall protect, indemnify, and save ITD harmless from and against any damage, cost, or liability including reasonable attorney's fees for any or all injuries to persons, property or claims for damages arising from any acts or omissions of the Contractor, its employees, or subcontractors.

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of ITD be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Agreement.

#### **4.22 ALCOHOL AND DRUG-FREE WORKPLACE**

Along with its bid, the Bidder shall submit an affidavit certifying compliance with Title 72, Chapter 17, Idaho Code, requiring the Contractor and its subcontractors at the time of bid to provide a drug-free workplace program and to maintain such program throughout the duration of the Contract. (See **Appendix C**)

#### **4.23 ILLEGAL ALIENS**

Contractor warrants that any contract resulting from this Solicitation is subject to Executive Order 2009-10 [http://gov.idaho.gov/mediacenter/execorders/eo09/eo\\_2009\\_10.html](http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html); it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five percent (5%) of the contract price, per violation, and/or termination of its contract. (See **Appendix D**)

#### **4.24 ITD POLICY COMPLIANCE**

The following ITD policies apply to this contract when the Contractor is performing work at an ITD facility or when using ITD equipment or other property. These policies shall remain in force for the duration of the contract:

A-18-10	Harassment in the Workplace policy
A-18-12	Alcohol and Drug-free Workplace policy
A-22-02	Computer, E-Mail, and Internet Usage policy
A-23-03	Workplace Violence Policy

These policies are provided as **Appendix A**, and are incorporated in this agreement. It is the Contractor's responsibility to read, understand and comply with these policies; 100% compliance is mandatory. Furthermore, Contractor is responsible for ensuring that all their employees and subcontractors adhere to these policies. ITD reserves the right to remove from its premises, at any time, any Contractor or his/her employee or subcontractor that fails to follow these policies. ITD also reserves the right to remove its property, at any time, from any Contractor or his/her employee or subcontractor that fails to follow these policies.

All Contractor's employees and subcontractors are required to wear identification badges at all times while on the ITD's premises. The Contractor and its employees or subcontractors are not employees of ITD, but ITD retains the right to control its own work place and the use of its property.

#### **4.25 INSURANCE REQUIREMENTS**

Contractor shall obtain and maintain insurance at its own expense as required herein for the duration of the agreement, and comply with all limits, terms and conditions stipulated. Policies shall provide, or be endorsed to provide, all required coverage. The Contractor shall provide certificates of insurance or certified endorsements as applicable for the insurance required. The Contractor shall not commence work under this Agreement until satisfactory evidence of all required insurance is provided to the State. All insurance, except for Workers Compensation, and Professional Liability/Errors and Omissions shall be endorsed to name the State of Idaho and ITD as Additional Insured. A certified copy of the endorsement, or complete policy containing the endorsement, shall be provided to the State prior to the commencement of work.

All insurance shall be with insurers rated A-, VII, or better in the latest Bests Rating Guide, and be in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary. Policies may contain deductibles, but such deductibles shall not be deducted from any damages due the State.

If any of the liability insurance required for this agreement is arranged on a "claims-made" basis, "tail coverage" shall be required at the completion or termination of this agreement for a duration of twenty-four (24) months thereafter. Continuous "claims-made" coverage shall be acceptable in lieu of "tail-coverage" provided the retroactive date is on or before the effective date of this agreement, or twenty-four-months "prior acts" coverage is provided. Contractor shall be responsible for furnishing certification of "tail coverage" or continuous "claims-made" coverage.

By requiring insurance herein, the State does not represent that coverage and limits shall necessarily be adequate to protect the Contractor, and such coverage and limits shall not be deemed as a limitation on the Contractor's liability under the indemnities granted to the State.

Contractor shall maintain insurance in amounts not less than the following:

##### **1 Commercial General and Umbrella Liability Insurance**

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this contract.

CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form; providing equivalent coverage) and shall cover liability arising from premises, operations, independent Contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

##### **2 Business Automobile and Umbrella Liability Insurance**

Contractor shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

### **3 Workers Compensation Insurance and Employer's Liability**

Worker's Compensation. The Contractor and all employers providing work, labor or materials under this contract, are subject employers under the Idaho Worker's Compensation Law, and shall comply with Idaho Statutes regarding Worker's Compensation.

For the duration of this Contract, and until all work specified herein is complete, the Contractor and all employers providing work, labor or materials under this contract, shall provide Idaho Worker's Compensation coverage that satisfies Idaho law for all their subject workers.

The Contractor must provide either a Certificate of Idaho Workers' Compensation Insurance issued by a surety licensed to write Idaho Workers' Compensation Insurance in the State of Idaho, as evidence that the Contractor has in effect a current Idaho Workers' Compensation Insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a State that has a current reciprocity agreement with the Industrial Commission.

Employer's Liability: This coverage is written in conjunction with Worker's Compensation and provides insurance for the employer's liability to its employees in circumstances where the injury is not covered by the Worker's Compensation law and the employer may be subject to common law liability. Employer's liability insurance shall be a minimum amount of \$100,000 per occurrence.

#### **Additional Requirements:**

**State of Idaho as Additional Insured:** The liability insurance coverage required for performance of the Contract shall include the State of Idaho, ITD and its division, officers and employees as additional insured, but only with respect to the Contractor's activities to be performed under this Contract.

**Notice of Cancellation or Change:** The Contractor shall ensure that all policies of insurance are endorsed to read that there shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage(s) without thirty (30) days prior written notice from the Contractor or its insurer to ITD. Contractor shall further ensure that all policies of insurance are endorsed to read that any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to the State of Idaho, ITD, and its divisions, officers and employees.

## **5. SPECIAL PROVISIONS**

### **5.1 SPECIAL PROVISIONS**

The Idaho Transportation Department's Standard Specifications for Highway Construction manual is available to the Contractor for \$30.00 plus tax. Contact the Idaho Transportation Department at 334-8430 to purchase. Contractors can download a PDF version, with the most current supplements of the manual at: <http://itd.idaho.gov> – click on 'Publications, Highways; Specifications'

### **5.2 CONTRACT REVISIONS**

Page 19 Subsection 104.02 of the state Standard Specifications; add the following after the first paragraph:

On this project, no adjustment in contract price shall be allowed for increases or decreases in quantity of a contract of item of work.

### **5.3 ADMINISTRATIVE COOPERATION**

Page 30, Subsection 105.05 of the State Standard Specifications; add the following:

The Superintendent shall be on site at all times during the setup of traffic control, during the flagging operation and during the removal of the traffic control devices

The following Special Provisions supplement or modify the *2012 ITD Standard Specifications for Highway Construction*, January 2013 Supplemental Specifications, Quality Assurance Manual, and QA Special Provisions.

## APPENDIX A – ITD POLICY COMPLIANCE

### HARASSMENT IN THE WORKPLACE ADMINISTRATIVE POLICY A-18-10

It is the policy of the Idaho Transportation Department (ITD) that all employees have the right to work in an environment free from harassment based on race, color, gender, sexual orientation, religion, national origin, age, disability, veteran status, marital status, or political or religious opinions or affiliations. All ITD employees also have the right to be free from retaliation for engaging in protected activities or expressing opposition to prohibited discrimination. The Department prohibits any form of harassment of its employees, and will take immediate and appropriate action to prevent and to correct behaviors that violate this policy. All employees are expected to work together cooperatively and to treat their co-workers with courtesy, respect, and dignity. These prohibitions against any form of harassment of ITD employees extend to third parties, including contractors, vendors and customers.

All harassment complaints, regardless of where reported or from whom, shall immediately be forwarded to a supervisor or manager who can take steps to involve the appropriate staff in resolving the matter.

All internal ITD complaints are investigated by Human Resource Services. Complaints of harassment by third parties, such as vendors, contractors, or customers are external complaints under Title VI. Complaints of this nature shall be forwarded to the EEO Manager, External Programs, for assistance.

#### **Harassment**

Harassment is a form of unlawful discrimination and is specifically prohibited by this policy. Harassment is defined for purposes of this policy as:

- Any conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, color, gender, sexual orientation, religion, national origin, age or disability, veterans status, marital status, or political or religious opinions or affiliations, or that of his or her relatives, friends, or associates; or
- Has the purpose or effect of creating an intimidating, hostile or offensive work environment; or
- Has the purpose or effect of unreasonably interfering with an individual's work performance; or
- Otherwise adversely affects an individual's employment opportunities.

#### **Sexual Harassment**

Sexual harassment, a specific form of harassment, is also prohibited and for purposes of this policy is defined as:

Unwelcome sexual advances, unwelcome requests for sexual favors, or other verbal or physical conduct of a sexual nature, whether welcome or not, when:

- Submission to the advances or requests is made either explicitly or implicitly a term or condition of an individual's employment; or
- Submission to, or rejection of such conduct by an individual is used as the basis for employment decisions; or
- The conduct of a sexual nature has the potential to unreasonably interfere with an

individual's work performance or to create an intimidating, hostile, or offensive work environment.

Sexual harassment usually involves members of the opposite sex; however, it also includes "same-sex harassment" (i.e. males sexually harassing males and females sexually harassing females because of the gender of the subject of the harassment).

Sexual harassment may take many different forms and includes by way of example, but is not limited to, the following:

- Verbal: Sexual innuendoes; sexually suggestive comments; sexual jokes; personally abusive remarks of a sexual nature; sexual propositions; threats; persistent and unwelcome requests for social contact; unwelcome requests for sexual favors; obscene letters, phone calls or e-mails; offering or implying a reward or threat concerning work assignments, performance reviews, discipline, promotions, or other terms or conditions of employment in exchange for sexual favors.
- Non-Verbal: Display or distribution of sexually suggestive material, objects or pictures; sexually graphic commentaries; suggestive or insulting sounds, leering, or whistling; obscene gestures, motions or movements.
- Physical: Any unwelcome physical contact, including touching, pinching or brushing the body; blocking the movements of another; coerced sexual intercourse; assault or battery.

### **Retaliation**

Retaliation by supervisors or retaliatory harassment by co-workers against any employee who has filed a complaint, testified, assisted or participated in any manner in an investigation or proceeding, or against any employee who opposes harassing or discriminatory behavior, or who exercises, claims or asserts a protected right is strictly prohibited.

Retaliation is defined for purposes of this policy as taking adverse employment action against an employee because of the employee's protected activity which is otherwise unrelated to the employee's ability to perform his or her job.

- Protected activity includes: opposition to a reasonably perceived or actual unlawful act or practice; participation in a proceeding involving a claimed unlawful act or practice by filing a charge, testifying, or assisting or participating in an investigation, proceeding or hearing; exercising, claiming or asserting a protected right; requesting a reasonable accommodation; or seeking a benefit.
- An adverse employment action may include, but is not limited to, termination, suspension, transfer, reassignment, disciplinary action, or any other employment action that causes a serious detriment to the employee's employment status. Unchecked retaliatory harassment by co-workers may also be considered an adverse employment action.

Retaliatory harassment by co-workers is defined for purposes of this policy as any conduct by a person not in a position to take direct adverse employment action against an employee who has engaged in a protected activity. Retaliatory harassment denigrates or shows hostility or aversion toward the individual because he or she has engaged in the protected activity; or has the purpose or effect of creating an intimidating, hostile or offensive work environment; or has the purpose or effect of unreasonably interfering with an

individual's work performance.

Retaliation and retaliatory harassment are considered as serious as prohibited harassment and will result in appropriate corrective action, up to and including dismissal. ITD is committed to maintaining an environment where individuals feel free to report any unlawful harassment or discrimination, and will vigorously enforce this policy and take appropriate action against those who engage in any form of retaliatory conduct.

### **Complaint Procedure**

Employees have the responsibility to bring any form of discrimination, harassment or retaliation to the attention of the Department immediately. Employees who believe they are being subjected to discrimination should notify their supervisor, anyone in management, the Human Resource Services Manager, or EEO Internal Resource Specialist. A 24-hour, toll-free reporting number (1-877-888-6250) is also available for reporting harassment or discrimination. A hotline placard displaying the toll-free number is permanently posted in central locations throughout the Department.

Individuals may also file complaints within the time frames listed (which usually run from the last date of the alleged incident or occurrence) as follows:

Federal Highway Administration (FHWA)	180 Days
US Department of Transportation (USDOT)	180 Days
US Department of Justice (USDJ)	180 Days
Equal Employment Opportunity Commission (EEOC)	300 Days
Idaho Human Rights Commission (IHRC)	365 Days

ITD does not have a specific time frame for reporting incidents of harassment and retains the right to take action against any individual found to have engaged in harassing or discriminatory behavior, regardless of the time period between when the act occurred and when it was reported. However, employees are strongly encouraged to bring any incidents of discrimination or harassment to the attention of the Department as soon as possible after any such conduct occurs.

### **Investigations**

Harassment complaints shall be forwarded immediately to the Human Resource Services Manager for review. All allegations of harassment will be taken seriously and investigated in a timely manner. Confidentiality shall be maintained to the greatest extent possible. The EEO Internal Resource Specialist or other qualified investigator will gather all relevant information in a fair and impartial manner and will submit a report of findings to the Chief Legal Counsel.

Any employee who provides false information during an investigation will be subject to appropriate corrective action. Employees will also be subject to corrective action for filing frivolous and/or false claims of harassment, discrimination, or retaliation.

### **Corrective Action**

If an investigation reveals that a violation of policy has occurred, appropriate corrective action will be taken. Corrective action shall be designed to stop the behavior immediately, prevent reoccurrence of the violation, and will be proportional to the severity and frequency of the offense.

- For employees of ITD, the corrective action could include, but is not limited to, an oral or written warning, training or counseling, reaffirmation of this policy, transfer or reassignment,

demotion, reduction of wages, suspension or dismissal.

- For non-employees of ITD, including contractors, vendors, and customers, the corrective action could include, but is not limited to, notification of employer, reassignment, termination of contract, removal from ITD premises, or limitations imposed on access to ITD employees or premises.

### **Supervisors and Managers**

Supervisors and managers shall be evaluated and held accountable on their performance reviews for their conduct, responsibilities, and adherence to this policy. They are responsible for modeling respectful behavior through their words and actions and are expected to:

- Take appropriate steps to ensure that all department employees are aware of and trained on this policy and that the procedures in this policy are followed.
- Pursue preventative measures to ensure a supportive, harassment-free work atmosphere.
- Notify the Human Resource Services Office immediately of all complaints concerning
- Discrimination, including harassment, sexual harassment and/or retaliation in the workplace.
- Prevent and reduce harassing behavior by taking appropriate corrective action in consultation with
- Human Resource Services.
- Ensure that retaliatory behavior is not allowed.

### **Policy Distribution**

The Harassment in the Workplace policy shall be re-issued to every department employee each time it is updated and during the orientation of new employees. Employees will be given an opportunity to read the policy and ask questions. All employees shall be required to sign an acknowledgment form indicating that they have read and understand the Harassment in the Workplace policy, and have had the opportunity to ask any questions concerning workplace harassment or the consequences should they fail to comply. Appropriate training will be made available to ensure that all employees understand their rights and responsibilities under this policy.

Signed \_\_\_\_\_

Date: October 09, 2009

L. Scott Stokes, P.E.  
Acting Director

This policy based on:

- Title VII, Civil Rights Act of 1964
- Title 67, Chapter 59, Idaho Code
- EEOC Guidelines
- B-18-10, HARASSMENT IN THE WORKPLACE
- Governor's Executive Order No. 2004-05

- Decision by the Director

Department-wide supervision and coordination assigned to:

• EEO Manager (External ITD programs); Human Resource Services Manager (Internal ITD employees) Direction for activity and results delegated to:

- Division Administrators, District Engineers, Section Managers, Supervisors, the Equal Employment

Opportunity Manager, the Human Resource Services Manager, and all employees

Department procedures contained in:

- Human Resource Services Manual, Internal EEO Complaints
- EEO Intranet Website, External EEO Complaints

Former dates of A-18-10:

11/13/86, 11/2/87, 4/13/89, 1/18/95, 11/22/99, 5/22/02, 9/15/03, and 5/12/08

Cross-reference to related Administrative Policies:

- A-18-07, CODE OF FAIR EMPLOYMENT PRACTICES
- A-18-09, EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION
- A-23-03, WORKPLACE VIOLENCE

### **ALCOHOL AND DRUG-FREE WORKPLACE ADMINISTRATIVE POLICY A-18-12**

The federal Drug-Free Workplace Act of 1988 requires the Idaho Transportation Department to annually certify to the Federal Highway Administration that the Department and its federal grantees maintain an alcohol and drug-free workplace. Alcohol or other drug misuse in the workplace causes detrimental effects on any organization and the employees. Alcohol or drug misuse impacts morale, lowers productivity and increases health care costs. The use of alcohol or drugs becomes a matter of concern to the Department when the employee's use interferes with job performance, conduct, attendance, or safety of state employees or others. The Idaho Transportation Department is committed to maintaining a work environment that is free from alcohol and drug misuse.

Department employees are subject to the following:

- The consumption of alcohol and/or drugs on the job is strictly prohibited. Employees may not work when their performance is affected by the use of, or if they are under the influence of, alcohol and/or drugs.
- The unlawful manufacture, distribution, dispensing, possession or misuse of alcohol or drugs is prohibited in the Idaho Transportation Department workplace. The workplace is defined as any building, property, vehicle, or equipment owned, leased, or otherwise used to conduct Department business.
- Based on "reasonable suspicion" evidence, as defined in the Human Resources Policy and Procedures Manual, **any** employee who is suspected of being under the influence of alcohol and/ or drugs while performing job-related duties for the Department may be asked to submit to a drug and alcohol test.

Employees who violate the alcohol and drug prohibitions outlined in the Human Resources Policy and Procedures Manual or refuse to submit to a requested drug and/or alcohol test shall be subject to disciplinary action in accordance with the Human Resources Policy and Procedure Manual.

The Human Resource Services office shall sponsor and/or conduct alcohol and drug awareness training for Department employees and provide information concerning counseling, rehabilitation

and employee assistance programs.

In accordance with Code of Federal Regulations, Title 49, Parts 40 and 382, a program of alcohol and drug testing shall be required for employees who operate vehicles requiring a Commercial Driver's License (CDL) and will include "safety sensitive" positions such as ITD pilots, mechanics, avalanche teams and incident response vehicle drivers, etc.

Employees covered under the drug and alcohol testing program are subject to the following:

- The use of any controlled substances, unless prescribed for that employee by a person licensed to practice medicine, is prohibited. Prior to operating ITD owned or leased motor vehicles or other motorized equipment, employees shall inform their immediate supervisor if they are taking prescribed drugs or other therapeutic drugs that may impair their ability to operate the vehicle or equipment. CDL employees shall have form ITD 1030, *Physician's Medication Release to Operate a Commercial Motor Vehicle* completed by the CDL employee's prescribing physician and returned to the supervisor. This form shall be sent to the Human Resource Services office to be placed in the confidential Qualified Driver's file.
- Any employee arrested, charged and/or convicted for committing a felony violation of a criminal alcohol or drug statute shall immediately notify their chain of command and the Chief Human Resource Officer. The employee may be placed on suspension without pay in accordance with Division of Human Resources Rule 190.04 *Suspension on Felony Charges* (IDAPA 15.04.01.190). If the employee is convicted, ITD shall consider the conviction's impact on the employee's ability to perform their job duties and take appropriate disciplinary action, up to and including dismissal.

Regardless of the infraction, the employee's privacy rights shall be maintained at all times. Information about a violation shall **not** be shared with co-workers or peers.

A summary of violations of the Alcohol and Drug-Free Workplace policy shall be reported by each division administrator and district engineer to the Chief Human Resource Officer on the first of January, March, July and October. The Chief Human Resource Officer shall compile all violations and report to the Director. Each quarter, the Director shall report to the Idaho Personnel Commission the violations and the corrective actions taken.

The Director shall submit, each August, the annual Idaho Transportation Department Alcohol and Drug-Free Workplace report and certification to the Federal Highway Administration.

\_\_\_\_\_  
Signed  
Brian W. Ness  
Director

Date: February 21, 2013

This policy based on:

- Title 41, Sections 701 and 702, United States Code, The Drug-Free Workplace Act of 1988
- Title 34, Part 85, Subpart F and Title 49, Part 40 and 382, Code of Federal Regulations
- Americans with Disabilities Act of 1990
- Decision by the Director

Department-wide supervision and coordination assigned to:

- Chief Human Resources Officer/Division of Human Resources

Direction for activity and results delegated to:

- Division Administrators, District Engineers, Section Managers, and the Chief Human Resources Officer

Department procedures contained in:

- This policy
- Human Resource Policy and Procedure Manual, 5.2, Alcohol and Drug-Free Workplace Considerations

Former Dates of A-18-12:

4/18/91, 5/16/94, 2/14/96, 2/28/03, 3/31/08, and 12/20/12

Cross-reference to related Administrative Policies:

- A-01-05, INTERNAL REVIEW
- A-06-05, OPERATING AND SERVICING STATE-OWNED VEHICLES
- A-18-02, PERSONNEL ACTIONS
- A-18-06, EMPLOYEE EDUCATION AND TRAINING
- A-23-02, MEDICAL TESTING FOR EMPLOYMENT

## **COMPUTER, E-MAIL, AND INTERNET USAGE ADMINISTRATIVE POLICY A-22-02**

This policy is intended to help staff and contractors employed by ITD understand the department's expectations regarding the use of computers, computer applications, electronic messaging, and the Internet. All staff, including contractors and interns, are subject to this policy.

### **Privacy**

The Department reserves the right to review employee, contractor, and interns' use of electronic files, the Internet, and electronic messages at any time and for any reason. Employees, contractors, and interns should be aware that personal privacy is not guaranteed and that the Department may monitor all such usage. Any unauthorized or inappropriate use discovered during such monitoring activities shall be formally reported to management and the Human Resource Services Manager for determination of appropriate action.

All electronic files, including e-mail messages, are generally retrievable even after they have been deleted. These items are discoverable as "public records" under the Idaho Public Records Law, Idaho Code, sections 9-337 through 9-348, unless specifically exempted from discovery. Therefore, electronic files are subject to inspection and copying by any member of the public.

### **Responsibilities**

All staff, contractors, and interns shall comply with the following Information Technology Resource Management Council (ITRMC) policies at all times, without exception.

- P1040, Employee Electronic Mail and Messaging Use
- P1050, Employee Internet Use
- P1060, Employee Personal Computer Use

Hardcopies of these policies shall be signed for with the policy acknowledgment form by staff, contractors, and interns on the first day of employment. Supervisors are responsible for reviewing these policies with all employees, and providing copies of the signed acknowledgment form to Human Resource Services. Electronic copies of these policies can be found at:  
<http://itrmc.idaho.gov/resources.html#policies>.

- **Employees:** An employee who observes or receives something inappropriate or offensive should report any incident to a supervisor immediately.

The Department insists that employees, contractors, and its agents conduct themselves appropriately when using State owned equipment, while utilizing the Internet, and when sending e-mail and other forms of electronic messages; and that they abide by relevant software licensing agreements and copyright rules.

User identification and passwords must be changed regularly, kept confidential, and comply with applicable State standards and policy.

- **Supervisory and Management Staff:** Supervisors and managers shall ensure that employees understand this policy. If inappropriate use is identified, reported, or suspected, supervisors and managers shall follow the procedures contained in this policy and the Human Resource Services manual, Chapter 13 – Disciplinary Actions.

### **Disciplinary Actions**

Each offense shall be handled on a case-by-case basis. Disciplinary action shall follow the procedures contained in the Human Resource Services manual, Chapter 13 – Disciplinary Actions. Any suspected illegal activity shall be reported to the Division Administrator and Human Resource Services Manager, who shall notify appropriate law enforcement authorities.

### **Policy Acknowledgment**

All employees who have access to Department computer resources shall sign the policy acknowledgment form that certifies that they have read, understood, and shall comply with this policy.

Employees who refuse to sign the acknowledgment form, shall face disciplinary action up to and including dismissal.

Additionally, a copy of this policy and associated ITRMC policies shall be given to all new employees as part of the hiring process. This policy shall be re-distributed to all employees for re-acknowledgment every two years at a minimum.

\_\_\_\_\_  
Signed  
Brian W. Ness  
Director

Date June 07, 2010

This policy is based on:

- ITRMC Policies P1040, P1050, and P1060
- Statewide Policies on Computer, the Internet and Electronic Mail Usage by State Employees
- Idaho Protection of Public Employees Act (a.k.a. Whistleblowers Act)
- Decision by the Director

Department-wide supervision and coordination assigned to:

- Administrative Services Division Administrator

Direction for activity and results assigned to:

- Employees, Supervisors, the Chief Technology Officer, and the Human Resource Services

## Manager

Department procedures contained in:

- This policy
- Human Resource Services manual sections on Ethical Conduct, Disciplinary Actions, Conditions of Employment, Misuse of Department Resources, and Due Process Procedures
- New employee hiring packet

Former date of A-22-02:

7/30/79, 3/5/93, 6/10/96, 9/5/00, and 12/11/01

Cross-reference to related Administrative policies:

- A-01-15, RELEASE AND RESTRICTION OF DEPARTMENT RECORDS
- A-06-02, DEPARTMENT CORRESPONDENCE
- A-06-08, SALES ACTIVITIES IN THE WORKPLACE
- A-06-25, RECORDS AND FORMS MANAGEMENT
- A-06-13, DEPARTMENT FACILITIES AND EQUIPMENT
- A-06-16, SECURITY OF DEPARTMENT FACILITIES
- A-18-03, PART-TIME OUTSIDE EMPLOYMENT
- A-18-10, HARASSMENT IN THE WORKPLACE
- A-18-12, ALCOHOL AND DRUG-FREE WORKPLACE
- A-20-01, RELEASE OF DEPARTMENT INFORMATION TO THE MEDIA
- A-22-04, REMOTE ACCESS TO ITD INFORMATION RESOURCES
- A-23-02, WORKPLACE VIOLENCE

## **WORKPLACE VIOLENCE ADMINISTRATIVE POLICY A-23-03**

The Idaho Transportation Department is committed to increasing the safety of its employees while at work by establishing procedures for reporting, investigating, and responding to incidents of threatened and/or actual violence in the workplace.

Employees who violate any part of this policy may be subject to disciplinary action up to, and including, dismissal.

### **Prohibited Actions**

Workplace violence includes any behavior through communication or physical action that is intended to, or is reasonably expected to threaten, intimidate, or harm another person. These prohibited actions include, but are not limited to:

- Threats of violence, expressed as verbal comments, directly or indirectly expressed in a veiled, or conditional manner to another person(s).
- Threats of violence that may be communicated through any written or pictorial documentation including computer memorandum(s).
- Physical actions such as hitting, pushing, kicking, holding, impeding, physical gestures, or forcibly blocking the movement of another person(s).

Additionally, all employees, or persons associated with the department whose work is supervised by ITD staff or who receive direction concerning work duties that are performed at ITD facilities, are

prohibited from carrying or using a firearm or weapon of any kind that is readily capable of lethal use in a department-owned or occupied building and in any department-owned equipment or vehicle. All Peace Officers (including security officers) possessing the duty and power of arrest for violation of the general criminal laws of the state of Idaho are exempt from this policy. Any further exemptions must be authorized in writing by the Director.

### **Workplace Violence Reporting**

For the protection of all employees, the immediate supervisor, or the next higher manager (if the concern is with the immediate supervisor) shall notify the Human Resource Services Manager of any workplace violence incident. Employees shall report to their supervisor workplace violence incidents regardless of the nature of their relationship to the individual who initiated the prohibited behavior. Any person who intentionally makes a false report about workplace violence will be subject to disciplinary action up to, and including, dismissal.

All workplace violence incidents that are reported under this policy will be kept confidential to the extent possible. However, the department shall act appropriately and prudently, based upon the information received and will attempt to insure the physical safety of its employees and others. The department can not guarantee anonymity to the person(s) who reported the incident. The identity of any person(s) involved with the reported incident shall only be disclosed to those who have a legitimate need to know.

The Workplace Violence policy **does not preclude** that any employee may contact law enforcement or emergency personnel, at any time, should the incident/behavior warrant immediate intervention by law enforcement personnel.

In the event an incident requires immediate intervention by law enforcement personnel, any involved party may immediately contact the appropriate law enforcement agencies. When appropriate, the department will cooperate and assist with any criminal investigation(s) or prosecution(s) that may result from reported workplace violence incidents.

Discrimination, harassment, or retaliation against any person who reports or responds to workplace violence is prohibited. Interference or obstruction with any investigation by a department employee is prohibited.

### **Workplace Violence Documentation**

The Human Resource Manager shall document all reported workplace violence incidents and submit annually to the Director basic, non-confidential statistical information on these incidents, with a copy to the Employee Safety/Risk Management Manager.

\_\_\_\_\_  
Signed

Date: 4/14/99 DWIGHT M.

BOWER  
Director

This policy based on:

- 18-3302D, and 19-501, Idaho Code
- Governor's Executive Order 96-03, Establish the Capitol Mall as a Weapon-Free Zone
- Decision by the Director

Department-wide supervision and coordination assigned to:

- Deputy Director

Direction for activity and results delegated to:

- Division Administrators, District Engineers, Chief of Administration, Human Resource Services Manager, and the Employee Safety/Risk Management Manager

Department procedures contained in:

- Human Resource Services manual

Former dates of A-23-03:

-0-

Cross-reference to related Administrative Policies:

- A-01-08, POLITICAL ACTIVITIES
- A-07-03, TORT CLAIM ACTION AGAINST EMPLOYEES
- A-18-10, SEXUAL HARASSMENT
- A-18-12, ALCOHOL AND DRUG-FREE WORKPLACE
- A-22-02, COMPUTER USE POLICY
- A-31-04, COMMISSION OF DEPARTMENT EMPLOYEES AS PEACE OFFICERS

## APPENDIX B – BID SCHEDULE

**Bidder (company name):** \_\_\_\_\_

The bid item shall be filled in completely by the Bidder in the bid schedule, by indicating total dollars and cents under the Total Price. All cost will be included here and will be fully burdened to include but not limited to, labor, materials, wages, transportation, lodging, overhead, and per-diem.

All of the items shown or noted on the plans or in these specifications, which are not specifically a bid item, are considered incidental items. The cost of furnishing and installing all incidental items will not be paid for separately, but shall be included in the contract unit prices as bid, unless otherwise noted.

The total man hours and Rent Construction Sign 48" X 48", are estimated and for quote evaluation only. The actual quantity and hours for this project may vary.

### Bid Schedule A

DESCRIPTION	QUANTITY TOTAL MAN HOURS	UOM	UNIT COST	EXTENDED COST
Flagger	432	HR	\$ _____	\$ _____
Superintendent	216	HR	\$ _____	\$ _____
			<b>Total Extended Cost</b>	<b>\$ _____</b>

### Bid Schedule B

DESCRIPTION	QUANTITY	UOM	UNIT COST	EXTENDED COST
Rent Construction Sign 48" X 48"	6	Lump Sum	\$ _____	\$ _____
			<b>Total Extended Cost</b>	<b>\$ _____</b>

**COMBINED BID SCHEDULE TOTAL EXTENDED COST A + B = \$ \_\_\_\_\_**

**THIS APPENDIX MUST BE COMPLETED AND RETURNED WITH RESPONSE**

**APPENDIX C – AFFIDAVIT: ALCOHOL AND DRUG FREE WORKPLACE**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The undersigned being duly sworn upon oath deposes and says that \_\_\_\_\_  
(Contractor Name)

complies with the provisions of Section 72-1717 Idaho Code (Drug Free Workplace program); that

\_\_\_\_\_ provides a drug-free workplace program that complies with the  
(Contractor Name)

provisions of Idaho Code, Title 72, Chapter 17 and will maintain such program throughout the life this

contract and that \_\_\_\_\_ shall subcontract work only to  
(Contractor Name)

subcontractors meeting the requirements of Idaho Code, section 72-1717(1)(a).

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and State

By: \_\_\_\_\_  
(Signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.  
Commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, residing at

**THIS APPENDIX MUST BE COMPLETED AND RETURNED WITH RESPONSE**

**APPENDIX D – AFFIDAVIT: ILLEGAL ALIENS**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The undersigned, being duly sworn upon oath, deposes and says that \_\_\_\_\_  
(Contractor Name)

complies with the provisions of Idaho Executive Order 2009-10 (Establishing a Policy for All State  
Agencies Concerning Public Funds); that \_\_\_\_\_ substantiates that all  
(Contractor Name)

employees providing services or involved in any way on projects funded directly by or assisted in whole  
or part by state funds or federal stimulus dollars can legally work in the United States and complies with  
the provisions of Idaho Executive Order 2009-10 and will maintain such throughout the life of this  
contract and that \_\_\_\_\_ shall subcontract work only to subcontractors  
(Contractor Name)

meeting the requirements of Idaho Executive Order 2009-10. Any misrepresentation or any employment  
of persons not authorized to work in the United States constitutes a material breach and shall be cause  
for the imposition of monetary penalties up to five percent (5%) of the contract price, per violation,  
and/or termination of the contract.

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
City and State

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

Commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, residing at

**THIS APPENDIX MUST BE COMPLETED AND RETURNED WITH RESPONSE**

## APPENDIX E – SIGNATURE PAGE



### Idaho Transportation Department

Business & Support Management

3311 West State Street (83703)

PO Box 7129

Boise, ID 83707-1129

### SIGNATURE PAGE for Use with a Submitted Invitation to Bid (ITB) Response

Bids and pricing information shall be typewritten or handwritten in ink and shall be signed in ink. Originals and copies of the bid shall be submitted in accordance with the solicitation documents. Submitted bids must include this signature page with the ORIGINAL signature of an authorized representative of the submitting Contractor.

NO LIABILITY WILL BE ASSUMED BY THE IDAHO TRANSPORTATION DEPARTMENT FOR A CONTRACTOR'S FAILURE TO OBTAIN THE TERMS AND CONDITIONS AND ANY PROPERLY ISSUED SOLICITATION ADDENDUMS IN A TIMELY MANNER FOR USE IN THE CONTRACTOR'S RESPONSE TO THIS SOLICITATION OR ANY OTHER FAILURE BY THE CONTRACTOR TO CONSIDER THE TERMS, CONDITIONS, AND ANY ADDENDUMS IN THE CONTRACTOR'S RESPONSE TO THE SOLICITATION.

Send your bid package to:

Idaho Transportation Department

ATTN: Kirk Anderson

PO Box 7129

Boise, ID 83707-1129

OR

FedEx, UPS, or other Couriers:

Idaho Transportation Department

ATTN: Kirk Anderson

3311 W. State St.

Boise, ID 83703

This ITB response is submitted in accordance with all documents and provisions of the specified Bid Number and Title detailed below. By my signature below I accept the CONTRACT TERMS AND CONDITIONS and the SOLICITATION INSTRUCTIONS TO CONTRACTORS in effect at the time this ITB was issued, as incorporated by reference into this solicitation. As the undersigned I certify I am authorized to sign and submit this ITB response for the Bidder. I further acknowledge I am responsible for reviewing and acknowledging any addendums that have been issued for this solicitation.

Bid Number: \_\_\_\_\_ Bid Title: \_\_\_\_\_

Bidder (Company Name): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, ST, ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

PUBLIC WORKS LICENSE NO (if applicable): \_\_\_\_\_ FEIN/SSN: \_\_\_\_\_

**THIS SIGNATURE PAGE MUST BE SIGNED WITH AN ORIGINAL HANDWRITTEN SIGNATURE (PREFERABLY IN BLUE INK) AND RETURNED WITH YOUR BID FOR YOUR BID TO BE CONSIDERED.**

\_\_\_\_\_  
Original Handwritten Signature (in ink)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

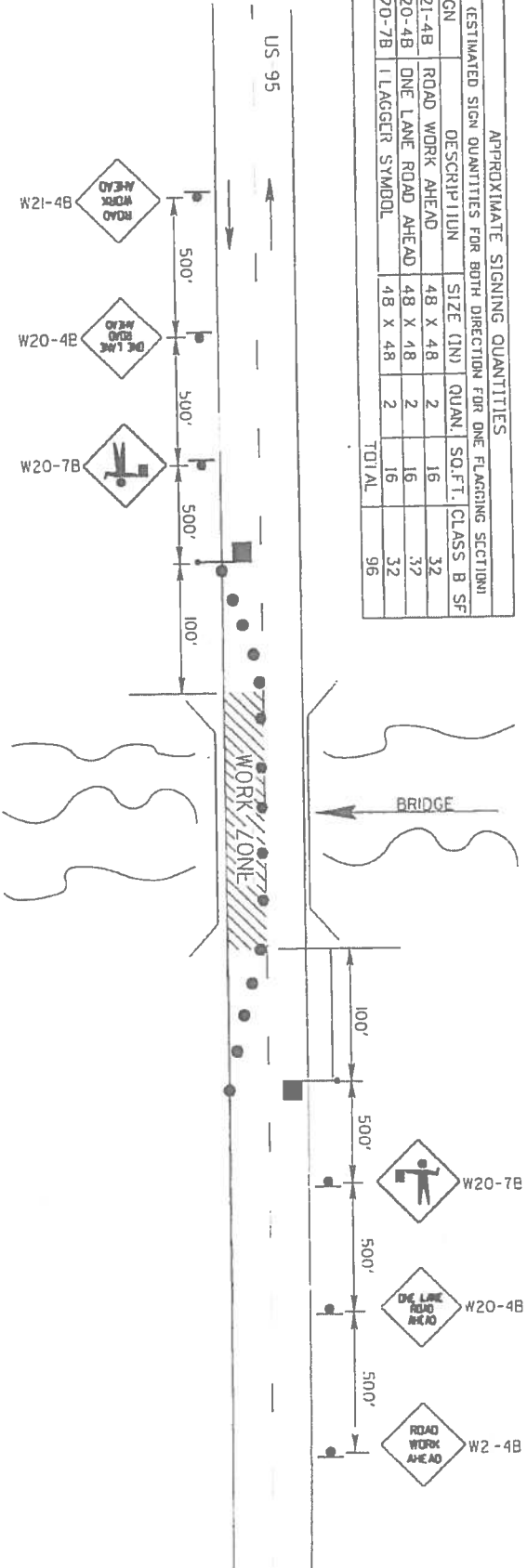
\_\_\_\_\_  
Title



LANE CLOSURE IN TWO LANE SECTION  
SIGNING SERIES REQUIRED FOR FLAGGING SECTION

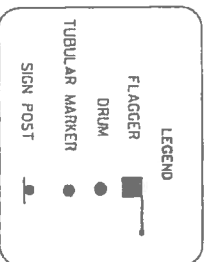
APPROXIMATE SIGNING QUANTITIES

ESTIMATED SIGN QUANTITIES FOR BOTH DIRECTIONS FOR ONE FLAGGING SECTION					
SIGN	DESCRIPTION	SIZE (IN)	QUAN.	SO. FT.	CLASS B SF
W21-4B	ROAD WORK AHEAD	48 X 48	2	16	32
W20-4B	ONE LANE ROAD AHEAD	48 X 48	2	16	32
W20-7B	FLAGGER SYMBOL	48 X 48	2	16	32
TOTAL				96	



1. ALL TAPER LENGTHS, AND WORK ZONE TRAFFIC CONTROL, SIGNING AND DEVICES SHALL MEET OR EXCEED THE REQUIREMENTS OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD), AS ADOPTED BY THE STATE.
2. ALL SIGNS AND CHANNELIZING DEVICES SHALL BE NEW OR IN LIKE NEW CONDITION AND SHALL MEET THE RETRO REFLECTIVITY REQUIREMENTS OF THE IDAHO TRANSPORTATION DEPARTMENT STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, SUBSECTION 712.02.
3. ALL DISTANCES BETWEEN SIGNS ARE A MINIMUM AND MAY REQUIRE SPACING ADJUSTMENTS IN THE FIELD DEPENDING ON PREVAILING CONDITIONS, AND/OR CONFLICTS WITH EXISTING SIGNS.
4. ADDITIONAL SIGNING MAY BE REQUIRED AS DIRECTED.
5. SIGNS AND SIGN STANDS NOT IN USE SHALL BE REMOVED OR LAMP DOWN AT LEAST 15 FEET FROM THE TRAVEL WAY.
6. SOME LTD SIGN NUMBERS ARE NOT CONSISTENT WITH MUTCD SIGN NUMBERS. SEE LTD SIGN CHART.
7. FLAGGERS SHALL BE EQUIPPED WITH TWO-WAY RADIOS CAPABLE OF TRANSMITTING A DISTANCE OF 2 MILES AND BATTERIES TO LAST THROUGH EACH DAY OF OPERATION.
8. PLACE ADDITIONAL "ROAD WORK AHEAD" SIGNS AS NEEDED, WHEN TRAFFIC QUEUES GO BEYOND FIRST "ROAD WORK AHEAD" SIGN.

NOT TO SCALE



NO. DATE		BY		REVISIONS		DESIGNED		CHECKED		SCALE		IDaho TRANSPORTATION DEPARTMENT		PROJECT NO.		TEMPORARY TRAFFIC CONTROL		COUNTY		SHEET 1 OF 1	
						G. Nishan		G. Nishan		1/16" X 17"		DISTRICT 3				US-95 BRIDGE INVESTIGATIONS		English			
						B. Johnson		B. Johnson		PRINTS ONLY											
						G. Nishan		G. Nishan		CAD FILE NAME											
						K. Sabin		K. Sabin		DRAWING DATE											
										JUNE 2014											



## APPENDIX F – FHWA1273

FHWA-1273 -- Revised May 1, 2012

### REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

#### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design- build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

#### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

#### **8. Reasonable Accommodation for Applicants /**

**Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program

has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal

prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL). Apprentices

will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by

the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

##### d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert

Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such

contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for

the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

#### **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the

Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

#### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every

subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if at any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by

submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in

addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of

these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**  
This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by

the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of

mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.